

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

MICROSOFT CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	
)	
DATATERN, INC.,)	
)	
Defendant.)	CIVIL ACTION NO. 1:11-cv-02365-KBF
)	CIVIL ACTION NO. 1:11-cv-02648-KBF
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SAP AG and SAP AMERICA, INC.,)	
)	
Plaintiffs,)	DEFENDANT DATATERN, INC.'S
)	NOTICE OF MOTION FOR RELIEF
v.)	PURSUANT TO FED. R. CIV. P. 56(D)
)	
DATATERN, INC.,)	
)	
Defendant.)	
)	

PLEASE TAKE NOTICE that upon the supporting Memorandum of Law and the Declaration of M. Carolina Avellaneda filed concurrently herewith, defendant DataTern, Inc. (“DataTern”), by and through its attorneys, McCarter & English, LLP, will request that this Court, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, on such date and time specified by the Court, grant it relief pursuant to Fed. R. Civ. P. 56(d), either by deferring consideration of Microsoft Corporation’s (“Microsoft”) “alternative” basis for summary judgment and permitting DataTern to conduct the additional discovery identified in DataTern’s Memorandum of Law, or by denying that aspect of Microsoft’s motion

as premature. DataTern further asks for such other and further relief as the Court deems just and proper.

PLEASE TAKE NOTICE that opposition papers, if any, must be served in accordance with Local Rule 6.1(b).

Dated: November 28, 2012

McCARTER & ENGLISH, LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above Notice of Motion for Relief Pursuant to Fed. R. Civ. P. 56(f) was served on this 28th day of November, 2012 upon counsel of record for Microsoft Corp., SAP AG and SAP America, Inc. via ECF.

/s/ David Himelfarb
David Himelfarb